



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

JRE  
Docket No: 4995-97  
12 April 1999

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: FORMER [REDACTED]  
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments  
(2) NNMCM Psych ltr 6520 020400, 10 Jul 98  
(3) NCPB ltr 5420 Ser:99-006, 14 Jan 99  
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show that he was retired by reason of physical disability with a rating of 70%.

2. The Board, consisting of Messrs. Bartlett, Ensley and Pfeiffer, reviewed Petitioner's allegations of error and injustice on 4 March 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although, it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner initially enlisted in the Navy on 26 February 1975. He was promoted to AT1 effective 16 July 1980. He was discharged on 7 February 1992, by reason of Other Physical/Mental Conditions-Personality Disorder. He completed a total of 16 years, 11 months and 21 days of active service. He received \$13,309.69, in separation pay.

d. In correspondence attached as enclosure (2), designees of the Specialty Leader for Psychiatry advised the Board, in effect, that Petitioner's first visit to a mental health care

professional was on 2 February 1983, when he was evaluated because of complaints of stress. He was given a diagnosis of Psychological Factors Affecting Physical Condition. Recommended treatment consisted of training in muscle relaxation, and possible future therapy focused on his "interpersonal style." He was seen by a psychologist on 4 August 1987, and reported a 14 year history of compulsive gambling, with moods ranging from deep depression to extreme exhilaration. He was given a diagnosis of Compulsive Gambling, and referred to Gambler's Anonymous. On 19 August 1987, a civilian psychiatrist noted that Petitioner barely fulfilled the diagnostic criteria for pathological gambling, mild, and that he met the criteria of Self Defeating Personality Disorder. He participated in an in-patient compulsive gambling treatment program at Naval Hospital Long Beach, during the 31 May-13 July 1988 period. Compulsive gambling and compulsive overeating were diagnosed, and he was discharged with an aftercare plan that included Overeaters Anonymous, Gamblers Anonymous, ALANON and Adult Children of Alcoholics. Although compliant with the aftercare plan, he requested further therapy for compulsive gambling on 9 August 1989. He attended six weekly sessions of an "NP" group run by a licensed clinical social worker, and was returned to full duty with no further psychiatric treatment indicated at that time. He was referred for outpatient psychotherapy during late November 1989, and later reported suicidal ideation, on 5 and 9 January 1990. On 5 February 1990, a civilian psychologist wrote to officials of a Navy branch medical clinic to advise that Petitioner was depressed and needed antidepressant medication. Petitioner was not evaluated for antidepressant medication at that time. On 13 November 1990, a second civilian therapist recommended that Petitioner be started on medication, and a Navy general medical officer prescribed an antidepressant medication on that date.

e. Petitioner was admitted to a Department of Veterans Affairs (VA) medical center on 30 November 1990. His antidepressant medication was stopped "with no ill effect", and the hospital course revealed "no clear signs of symptoms of major depression", or evidence of psychotic thinking. He was discharged with diagnoses of Adjustment Disorder and Dependent Personality Disorder. On 3 June 1991, he sought mental health care, and a psychology intern gave him diagnoses of Adjustment Disorder with mixed disturbance of emotions and conduct, Occupational Problem, Family Problem, Pathological Gambling, and Dependent Personality Disorder. On 29 June 1991, a diagnosis of "rule-out" Depressive Disorder Not Otherwise Specified was added, although the personality disorder was still considered to be the primary diagnosis. The intern considered restarting his antidepressant medication, as well in-patient care, to stabilize Petitioner. On 31 July 1991, the intern noted that Petitioner's mood and affect were labile, with fluctuations ranging from sad to hopeful. The intern contacted Petitioner's command and recommended that he be assigned limited duties, if not placed on a limited duty board. On 2 August 1991, Petitioner complained of increased stress, insomnia, hopelessness, impulsive and excessive spending and suicidal ideation. His affect was noted to be labile. Notwithstanding those complaints, he was recommended for discharge because of his personality disorder. He was admitted to in-patient psychiatry at Long Beach Naval Hospital on 13 August 1991, after presenting to the emergency room in acute crisis after a gambling excursion. No evidence of a thought process or content disturbance was noted. He did well even though not placed on

psychotropic medication. He was discharged the following day with diagnoses relating to his gambling, marital problems, and personality disorder. Once again, administrative separation was recommended. He spent the remainder of his time on active duty in out-patient psychotherapy of some sort, including thirty four sessions of group psychotherapy provided by Navy psychologists. The last entry in his health record, dated 24 January 1992, indicates that he requested a medical board for depression, and that he was advised to "go through his Medical Clinic to request reevaluation for that purpose."

f. On 3 November 1997, the VA granted Petitioner service connection for bipolar affective disorder, depressed. According to the VA rating decision, that condition was diagnosed "in January 1993 and continues to have that diagnosis as of February 1997. He has received ongoing therapy and has been on medication." Review of his VA treatment record reveals that his initial diagnoses by the VA included Depressive Disorder NOS, and Pathological Gambling, and it was noted that he had dependent and self-defeating personality traits. He was first diagnosed with a cycling mood disorder on 18 May 1995, when he was diagnosed with Bipolar Disorder NOS. In the opinion of the authors of enclosure (2), much of the data in Petitioner's naval health record is consistent with the data and conclusions contained in the VA medical record. Both records reveal a history of waxing and waning affective symptoms and signs. Although a personality disorder was thought to be the primary diagnosis, a mood disorder diagnosis was considered by Navy mental health professionals on several occasions. Moreover, at one point, psychological testing was consistent with depression. The record also documents that he showed improvement when briefly treated with a tricyclic antidepressant. He has one first-degree relative who has a severe mental disorder thought to be Bipolar Disorder. Numerous studies have shown that relatives of bipolar patients have higher rates of bipolar disorder than do relatives of control subjects or patients with unipolar depression. Finally, as Petitioner's symptoms occurred later in his career, after a period of relatively normal performance, Bipolar Disorder NOS is a more likely diagnosis than that of a Personality Disorder. The authors of enclosure (2) concluded that Petitioner's request "to have the discharge for personality disorder changed to a medical discharge" had merit. They recommended adding a diagnosis of Bipolar Disorder NOS to his naval record.

g. In correspondence attached as enclosure (3), the Board was advised by the Director, Naval Council of Personnel Boards (NCPB), in effect, that Petitioner's medical condition rendered him unfit for duty at the time of his separation. In the opinion of the Director, NCPB, Petitioner's functional impairment has been relatively mild, as suggested by his own statement to a Congressman which provides, in part:

"Since I have left the United States Navy I have continued superior performance in my endeavors. I graduated from Bakersfield College in December of 1993 with an AA. And I graduated from Bradford College in Bradford, Massachusetts in May of 1996, with honors, receiving a BA."

The Director, NCPB, also opined, based on the contents of an undated, unsigned letter

presumably sent to the VA in support of a request for disability compensation, Petitioner's separation for personality disorder appears to have been largely the product of his active efforts to secure a non-punitive separation "due to an undeniably onerous confluence of personal/financial {stock market/gambling} and marital stressors." His letter further chronicles that after a four month period when he had a severe adjustment disorder and became homeless, he moved in with his brother and literally turned his life around. In the Director's opinion, had Petitioner been referred to the PEB prior to his separation, he would have been discharged by reason of physical disability with a 10% rating for bipolar affective disorder.

j. The report of a VA Compensation and Pension Psychiatric Evaluation dated 2 April 1993, indicates that Petitioner became homeless shortly after being discharged from the Navy, after he lost his separation pay by speculating on stocks. He sought help at a VA clinic during January 1993, and reported that he felt increasingly depressed, with hopelessness, compulsive overeating, loss of interest in activity, social withdrawal and crying spells. He was placed on an antidepressant and antianxiety medications, which improved his mood and helped with his anxiety and agitation. He was given an axis I diagnoses of pathological gambling, in remission for three months, and dysthymia with superimposed periods of major depression.

k. SECNAVINST 1850.4C, enclosure (4) provides special instructions and explanatory notes concerning the application of the VA Schedule for Rating Disabilities by the Naval Disability Evaluation System. The guidance for VA coded 9200-9210 provides, in effect, that a impairment may be classified as considerable, and ratable at 50%, where the service member requires frequent outpatient treatment and medication to maintain employment and avoid rehospitalization, and who despite treatment, exhibits extensive job instability and experience periodic relapses requiring hospitalization. A condition may be classified as definite, and ratable at 30%, where the member requires occasional outpatient treatment and medication to maintain employment and avoid rehospitalization, and may do well on this treatment program, although he or she may experience some job instability and often the illness may interfere with his or her advancement. A condition may be considered slight, and ratable at 10%, where none of the foregoing is applicable.

l. Petitioner's counsel maintains that Petitioner met the criteria for a 70% rating, based on his suicidal ideation/tendencies, and severe deficiencies in "work, school, family relations, judgment, thinking or mood".

#### CONCLUSION:

Upon review and consideration of all the evidence of record and especially in view of the comments contained in enclosures (2) and (3), the Board concludes that Petitioner was unfit by reason of physical disability at the time of his discharge because of bipolar disorder. It further concludes, after resolving doubt in his favor, that the VA rating of 30%, for that

condition, which was effective the day following his discharge from the Navy, is a more accurate reflection of the degree of impairment produced by his mental disorder than is the 10% rating recommended by the Director, NCPB. In this regard, it noted that even with medication and psychotherapy, he was unable to salvage his lengthy career in the Navy, and that following his discharge, he continued to experience some job instability and social maladjustment, and needed psychotropic drugs and psychotherapy in order to function successfully. Accordingly, the Board finds the existence of an injustice warranting the following corrective action.

**RECOMMENDATION:**

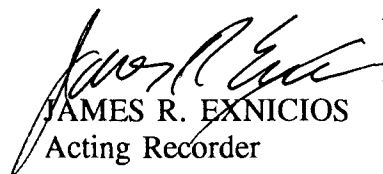
a. That Petitioner's naval record be corrected to show that he was not discharged from the Navy on 7 February 1992.

b. That Petitioner's naval record be further corrected to show that on 6 February 1992, while he was entitled to receive basic pay, the Secretary of the Navy found him unfit to perform the duties of his rate by reason of physical disability due to Bipolar Affective Disorder, which was aggravated while Petitioner was entitled to receive basic pay; that the disability is not due to intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; that Petitioner has completed over eight years of active service; that the disability is considered to be ratable at 30%, less a 0% existed prior to enlistment factor, in accordance with the Standard Schedule for Rating Disabilities in use by the Department of Veterans Affairs at the time the Secretary found Petitioner unfit, Code Number 9206; and that as accepted medical principles indicate the disability is of a permanent nature, the Secretary directed that Petitioner be permanently retired by reason of physical disability effective 7 February 1992, pursuant to 10 U.S. Code 1201.


c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

  
JAMES R. EXNICIOS  
Acting Recorder

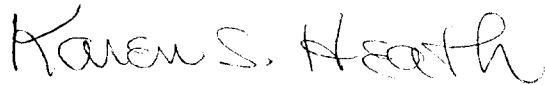
5. The foregoing report of the Board is submitted for your review and action.



W. DEAN PFEIFFER  
Executive Director

Reviewed and approved:

AUG 12 1999



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KAREN S. HEATH  
Principal Deputy Assistant Secretary of the Navy  
(Manpower and Reserve Affairs)